IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 572 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUSHILABEN NAVINCHANDRA SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/07/2006

ORAL JUDGMENT

1. In the present petition, a retired school teacher has prayed for pensionary benefits in terms of the Government policy. Before deciding

the controversies arising in the petition, short facts need to be noted.

2. The petitioner was employed as Assistant Teacher in one Seth Manilal Ranchhoddas High School which is a grant-in-aid school. The petitioner was appointed by an order dated 11.6.66. It is the case of the petitioner, to which no dispute has been raised by the respondents, that the date of birth of the petitioner is 9.5.1941. The age of the superannuation being 58 years, ordinarily the petitioner would have crossed the superannuation age on 8.5.1999. Due to her personal reasons, however, the petitioner was unable to continue in service. The petitioner was, therefore, desirous of retiring on voluntary retirement basis. The petitioner, therefore, addressed a letter to the school authorities on 24.2.1996 stating, inter alia, that having put in 30 years of service, because of her social circumstances, she wishes to take voluntary retirement with effect from 25.6.1997. Her request was accepted by the school authorities. The school authorities, therefore,

passed a resolution on 5.3.1997 and recommended to the Government authorities that the request of the petitioner be accepted. Eventually, the petitioner was permitted to retire on voluntary retirement basis with effect from 25.6.1997.

3. It is the case of the petitioner that the Government issued a resolution dated 6th April 2002 and made pension scheme applicable to teaching staff of private aided primary schools. The pension scheme made effective by the Government resolution dated 6.4.2002 shall be hereinafter to be referred to as the “said pension scheme”. The said pension scheme was made effective from 1st January 1997. It is the case of the petitioner that the resolution itself envisaged that those teachers who retired after 1.1.97 would have an option to choose pension scheme. Such option was to be exercised within six months from the date of the resolution. Certain other provisions were also made in the said resolution in this regard, reference to which will be made at a slightly later stage.

4. It is not in dispute that pursuant to the said pension scheme, the petitioner applied to the authorities for being covered under the said pension scheme. It is the case of the petitioner that she had filled up her form opting for pension scheme well within the time permitted by the Government under the said pension scheme. Though the exact date on which the petitioner filled her form for being covered under the pension scheme is not on record, there is no dispute raised by the respondents about the fact that such option was sought to be exercised by the petitioner within the period of six months from the date of resolution as provided in the said pension scheme.

5. It is, therefore, the case of the petitioner that since she was in service on 1.1.97, and retired only thereafter, her option for pension ought to have been granted. The petitioner had all along shown willingness to surrender the employer's contribution towards provident fund as envisaged in the said pension scheme. In fact, the petitioner voluntarily deposited an

sum of Rs.50,179/- being the employer's contribution to provident fund on 7th May 2003. To this aspect of the matter also, there is no dispute.

6. Despite the aforesaid factual background, the request of the petitioner for being covered by the said pension scheme came to be turned down by the authorities by the communication dated 21st June 2003. The reason stated in the said communication is that as per the resolution dated 6.4.2002 only those employees who had retired after 1.1.97 on superannuation could opt for pension and in case of employees retiring on voluntary retirement basis, such benefits cannot be extended. It is on this basis that the respondents turned down the request of the petitioner for being covered under the said pension scheme.

7. The petitioner attempted to resolve the dispute through an alternative redressel forum in the form of Lok Adalat. The attempt, however, failed. The petitioner has therefore filed the present petition challenging the said order

dated 21st June 2003 passed by the respondents declaring that the petitioner is not entitled to be covered under the said pension scheme.

8. The reply filed by the respondents is along the predictable lines. Shortly stated, it is sought to be contended that the petitioner had retired on voluntary retirement basis on 25.6.1997 and the resolution dated 6.4.2002 would not apply to the petitioner because when the petitioner ceased to be in service with effect from 26.6.1997, there was no pension scheme available. It is contended that the scheme would have retrospective applicability between 1.1.97 and 6.4.2002 only qua those employees who retired on superannuation. The petitioner having accepted voluntary retirement, therefore, cannot seek pensionary benefits.

9. Before deciding the issues arising in this petition, it may be noted that it is by now well settled that pension is neither a bounty nor a matter of grace. It is held to be a right of an employee for having put in long number of years of satisfactory service. It is considered to be

a deferred payment for years of rendering tireless service. In the backdrop of concept of welfare State, it is a measure of social security and reward for loyalty. These concepts have been refined and reiterated by the Hon'ble Supreme Court in series of decisions. In a recent decision in the case of K.S.R.T.C. V. K.O. Varghese, AIR 2003 SC 3966, the concept of pension was discussed by the Hon'ble Supreme Court at considerable length. It was observed that in a welfare State as a welfare measure, retiral benefit is grounded on consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. It was further observed that pension is not only compensation for loyal service rendered in past, but pension has also a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress. In para 19 of the decision, it was further observed that

the discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them obscure. The observations made by the Hon'ble Supreme Court in this regard may be noted at some length:

> “12. Before we deal with their respective contentions, it is necessary to appreciate the concept of pension. There are different classes of pensions and different conditions govern their grant. It is almost in the nature of deferred compensation for services rendered. There is a definition of pension in Article 366 (17) of the Constitution of India, 1950 (in short the "Constitution"), but the definition is not all pervasive. It is essentially a payment to a person in consideration of past services rendered by him. It is a payment to a person who had rendered services for the employer, when he is almost in the twilight zone of his life.
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> 13. A political society which has goal to set up a welfare State, would introduce and has, in fact, introduced as a welfare measure wherein the retiral benefit is grounded on

consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age. But, the evolving concept of social security is a later day development, and this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether changes were necessary in the system established by the operative 1834 Act. The Report of the Commission is known as "Northoote-Trevelyan Report". The Report was pungent in its criticism when it says that : "in civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducement to the parents and friends of sickly youth to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill-health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system. (See Gerald Rhodes Public Sector Pensions, pp. 18-19).

14. This approach is utterly unfair because in modern times public services are manned by

those who enter at a comparatively young age, with selection through stiff competitive examinations and ordinarily the best talent gets the opportunity.

15. Let us, therefore, examine; as was done by this Court in D. S. Nakara v. Union of India (AIR 1983 SC 130) as to what are the goals that any pension scheme seeks to subserve. A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that in determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many

are literally surviving now than the past. We owe it is to them and ourselves that they live, not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. The law is one of the chief instruments whereby the social policies are implemented and pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual or a cash income adequate, when taken along with the benefit in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed. See Social Security Law of Prof. Harry Calvert, p. 1) 1983 Lab IC

16. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension very from country to country and from scheme to scheme. But broadly stated they are : (i) as compensation to former members of the armed forces or their dependants for old age,

disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, reward for service rendered, or as a means of promoting general welfare (See Encyclopaedia Britannica Vol. 17, p. 575). But these views have become otiose.

17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education (1937 (302) US 74 : 82 Law Edn. 58) a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the

added qualification that it should ordinarily ensure freedom from undeserved want.

18. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance,in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and. therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison de'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon.

19. The discernible purpose thus underlying pension scheme or a statute introducing the

pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them obscure (See American Jurisprudence 24.881).

20. From the aforesaid analysis three things emerge : (i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

21. In Corpus Juris Secundum, Vol. 70 at p. 423, it is stated that the title 'pension' includes pecuniary allowances paid periodically by Government to persons who have

rendered services to the public or suffered loss or injury in the public service, or to their representatives; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions.

22. In its strict sense a pension is not a matter of contract, and is not founded on any legal liability, it is a mere bounty or gratuity "springing from the appreciation and consciousness of the sovereign", and it may be given or withheld at the discretion of the sovereign. It may be bestowed on such persons and on such terms as the law-making body of the Government prescribes, and it is, at most, an expectancy granted by the law. The term "pension" has been compared and distinguished from "bonus", "compensation", "profits" and "retirement payment". A pension fund is to be distinguished from an annuity fund derived in part from voluntary contributions under a statutory option to contribute or refrain from contributing."

10. With this background in mind, one may recall that in service jurisprudence, different kinds of retirements are envisaged.

(i) Superannuation retirement takes place when an employee crosses the maximum age prescribed

under the service rules beyond which he cannot remain in active service.

(ii)Compulsory retirement is one of the penalties under different service regulations. It can be imposed on an employee upon a departmental inquiry on the basis of proved charges. For example, in Gujarat Civil Service (Discipline and Appeal) Rules, (rule 6(6)) compulsory retirement is provided as one of the major penalties.

(iii) Premature retirement is a concept where the employer in terms of service regulations has power to order retirement of an employee upon crossing certain age or completion of certain number of years of service in public interest. Rule 161 of the BCSR gives such powers to the State Government with respect to its employees. Fundamental Rule 56J gives similar powers to the Central Government with respect to Central Government employees.

(iv)Voluntary retirement is a concept where an employee upon completion of certain number of years of qualifying service can with the

permission of the employer proceed on voluntary retirement. If the employee has put in sufficient number of years of service and is permitted to retire on voluntary retirement basis, he retains all the benefits of the service already put in and would be entitled to all post retiral benefits on the basis of number of years of service put in by him.

(v) In certain service regulations, there is also a concept of retirement on medical grounds permitting the employee to seek pension called invalid pension even though the employee may not have put in sufficient number of qualifying years of service to seek pension under the normal rules. To this kind of retirement, we need not go into in the present petition.

11. Under the resolution dated 6.4.2002 making pension scheme available to the teaching staff of private aided primary schools, it is provided that the pension entitlement of such employees would be governed by the provisions in this regard contained in BCSR. If one,

therefore, adverts to the relevant provisions contained in BCSR, it would be found that rule 251 of the BCSR provides for varieties of pensions. Rule 251 reads as follows:-

"251. The following different classes of pension may be granted to Government servants or their families:-

(1)Superannuation pension, which is a pension granted to a Government servant who retires from Government service at an age at which he is by rule entitled or required to retire.

(2)Retiring pension, which is a pension granted to a Government servant who retires voluntarily, or is required by Government to retire from Government service after completing a prescribed period of duty and service or duty alone but before reaching the age of superannuation.

(3)Invalid pension, which is a pension granted to a Government servant who retires from Government service, before reaching the age of superannuation, on account of mental or bodily infirmity.

(4)Special additional pension, which is a pension granted to a Government servant in addition to a superannuation, retiring or

invalid pension, in consideration of the nature of the duties which he has performed.

(5)Compensation pension, which is a pension granted to a Government servant who is discharged from Government service, otherwise than on medical certificate and for no fault of his own, before earning a retiring or superannuation pension.

(6)Wound or injury pension, which is a pension granted to a Government servant wounded or injured while in Government service.

(7)Compassionate pension, which is a pension granted to a Government servant who is removed from Government service for misconduct, insolvency, or inefficiency.

(8)Family pension, which is a pension granted to the family of a deceased Government servant.”

Rule 252 of BCSR refers to superannuation pension and it reads as follows:-

> “252. A Government servant, who retires from pensionable service on or after attaining the age of superannuation fixed by the relevant clause of Rule 161, shall be granted a superannuation pension.”

Rule 254 of the BCSR deals with retiring pension which reads as follows:-

"254. Unless in any case it be otherwise distinctly provided in this sub-section, a Government servant shall be granted a retiring pension, if not being eligible for a superannuation pension, he is -

(1)permitted to retire from pensionable service after completing 25 years of duty and 30 years of total service reckoned from the date of first appointment; or

(2)required on the ground of inefficiency under Rule 165-A to retire from pensionable service after completing, reckoned from the date of first appointment -

(a) 21 years of duty and 25 years of total service, if he was in service on or before the 3rd August 1931 and has no break in his service since that date or,

(b) 23 years of duty and 27 years of total service, if he enters or has entered Government service after the 3rd August 1931 or having entered Government service, on or before that date has a break in his service since that date.

Note : In the case of Government servants who are required to retire on grounds of inefficiency under clause (2) of this rule pension will be regulated according to column 2 of the particular scale in Ruldl 282 to which he is subject.

> Explanation – The "Proviso" and "Explanation" in Rule 282 apply here also. Note 2. See clause (3) in rule 245."

It can thus be seen that for the purpose of seeking pension, even under the BCSR, no distinction has been drawn between a person retiring on superannuation and a person retiring on voluntary retirement basis. The only difference is in the quantification of pension between two kinds of cases and the important consideration is that the person retiring on voluntary retirement basis can seek pension only if he or she had put in sufficient number of qualifying years of service. So far as the entitlement of pension in both kinds of retiring employees is concerned, there is no distinction drawn.

11.1 In fact, even the cases of persons ordered to be retired on premature retirement by the Government in public interest, there is no distinction drawn at all when sub-rule (2) of rule 251 provides for retiring pension in both the cases wherein a person is permitted to retire on voluntary retirement basis as also a person who is required

by the Government to retire from service earlier than his date of superannuation. In fact, through series of decisions, the Hon'ble Supreme Court while upholding the right of the Government to prematurely retire its employees without holding inquiry by way of non penal order has held that such retiring employees would receive all post retiral benefits and the order therefore cannot be termed as penal and the powers therefore are not found to be opposed to the provisions contained in Article 311(2) of the Constitution. Reference in this regard can be made to the decisions of the Hon'ble Supreme Court in the case of Shyamlal v. State of UP, reported in AIR 1954 SC 369 and in the case of Union of India v. J.N.Sinha, AIR 1971 SC 40. In para 8 of the said decision, it was observed that :

> “One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The

aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the 'pleasure' doctrine embodied in Art. 310 of the Constitution."

12. With this background in mind, one may advert to the exact provisions made in the said pension scheme. It can be seen that on 6.4.2002, the Government framed a scheme to grant pension to the teaching staff of the private aided primary schools. The pension scheme was to be made effective from 1.1.1997. It is provided that those employees who retired prior to 1.1.97 will not be covered in the said scheme. However, those employees who were in service on 1.1.97, their past service will count towards calculation of pension. These provisions were made in the preamble to the scheme. Clause 3(b) of the said scheme on which heavy reliance is sought to be placed by the respondents provides that those employees who were in service as on 1.1.97, but retired from service before the date of the resolution shall have to give their option within a period of six months from the

date of the resolution. The option once exercised shall be final. In clause 5(b) of the pension scheme, it is further provided that those employees opting for pension scheme shall have to refund the employer's contribution towards provident fund within a period of one year.

13. As noted earlier, the preamble to the scheme makes it clear that the same is applicable to those employees who are in service on 1.1.97. The scheme was not made available to those who had retired prior to 1.1.97. There is no distinction drawn here and the words used are those who retired prior to 1.1.97. In other words, it is stated that those who were in service as on 1.1.97 would be covered by the pension scheme. Clause 3(b) of the said scheme has to be read in continuation of and in conjunction with the above mentioned provisions. When read in continuation, it becomes abundantly clear that the scheme was to be made applicable to all the employees who were in service as on 1.1.97. In clause 3(b) of the scheme also, I do

not find any reference which would enable the respondents to limit the application of the scheme only to those employees who had retired on superannuation after 1.1.97 but before 6.4.2002. The term “superannuated” or “retired on superannuation” is not to be found in clause 3(b), contrary to what is sought to be suggested by the respondents before the Court. In fact the phrase used is “seva nivrut”, meaning thereby, “retired from service”. This is vastly different from the term “vay nivrut” which would mean “retired on superannuation”.

14. On the basis of the interpretation of the circular itself, I find sufficient force in the contention of the petitioner that her case could not have been rejected by the Government solely on the ground that she retired on voluntary retirement basis after 1.1.97, but before 6.4.2002. To my mind, the resolution covers all cases of retirement either superannuation, voluntary or premature.

15. Quite apart from the above interpretation which I have adopted, I find that unless specifically

so provided, it would not be possible to differentiate and distinguish voluntary retirement from superannuation retirement for the purpose of pension in the background of the above resolution. As noted earlier, the resolution seeks to provide pension scheme for the teaching staff of private aided primary schools. Ordinarily, I find no distinction between superannuation and voluntary retirement in service regulations applicable to the petitioner which would make any distinction so far as the entitlement of pension of the employee is concerned.

16. In the case of UCO Bank v. Sanwar Mal, (2004) 4 SCC 412, while considering the concept of resignation and voluntary retirement, the Hon'ble Supreme Court observed that an employee can resign at any time whereas in case of retirement, he retires only on attaining the age of superannuation or in case of voluntary retirement, on completion of qualifying service. It was further observed that resignation brings about complete cessation of master-and-servant

relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits in view of the past service. It was observed that acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulation/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. There are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. This view was noted with approval by the Hon'ble Supreme Court in the case of Jaipal Singh v. Sumitra Mahajan, reported in (2004) 4 SCC 522 wherein in para 10 it was observed that “a similar question came up before this Court in the case of UCO Bank v. Sanwar Man in which this Court has inter alia held that in the case of “resignation”, the relationship of employer and employee terminates on acceptance of

resignation whereas in the case of “retirement”, voluntary or superannuation, the relationship continues for the purposes of payment of retiral benefits. In case of retirement, there is a nexus between such retirement and retiral benefits.” This issue came up for consideration before the Hon'ble Supreme Court once again in the case of RBI v. Cicil Dennis Solomon, reported in (2004) 9 SCC 461 wherein in para 10 it was observed that “In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in case of voluntary retirement, it can only be sought for after tendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former,

normally retiral benefits are denied but in case of the latter, the same is not denied.

17. It can thus be seen that for the purpose of retiral benefits, voluntary retirement is equated with superannuation retirement and not with resignation and the employee would be entitled to receive post retiral benefits in terms of service rules on the basis of his past service.

18. Before concluding, one may, however, notice that the concept of voluntary retirement under voluntary retirement scheme framed and offered by the employer which is gaining currency in recent past would stand on a different footing. In case of voluntary retirement scheme formulated by the employer to trim down the organization, it has been held that the same is not a proposal or an offer but an invitation to opt for such a scheme and the application of the employees would be an offer. Reference in this regard can be made to the judgment in the case of Bank of India v. O.P.Swarnakar, (2003) 2 SCC 721. In such cases, often it is found that the

employee once accepting voluntary retirement pursuant to the scheme cannot avail of the benefits being made available to other employees even if the same are with retrospective effect. This is on the basis of the logic that a person opting for VRS gets a certain package deal and receives certain additional monetary benefits in lieu of his remaining service. He thereafter cannot seek service benefits made available to existing employees even if it is with retrospective effect. Reference in this regard can be made to the decision of HEC Voluntary Retd. Empls. Welfare Soc. v. Heavy Engineering Corporation Ltd. reported in AIR 2006 SCW 1361.

19. In the present case, however, this Court is concerned with the situation when the petitioner herein had opted for voluntary retirement in terms of the service regulations. Her request was accepted. She was permitted to retire with effect from 25.6.97. The pension scheme was made applicable by the Government under the resolution with effect from 1.1.97 permitting all employees who were in service as

on 1.1.97 to opt for such pension scheme. The distinction sought to be drawn by the Government in the present case, namely, that those employees who had proceeded on voluntary retirement basis after 1.1.97 but before 6.4.2002 would not be governed under the scheme does not appeal to this Court either on the interpretation of the resolution itself or on the basis of the concept of superannuation retirement vis-a-vis the voluntary retirement and the concept of pension discussed and outlined herein-above as well noted in the relevant service regulations.

20. In the result, the petition is allowed. The impugned communication dated 21.6.2003 is quashed. The petitioner has already deposited the employer's share of provident fund way back in the year 2003. The respondents shall proceed to calculate the pension entitlement of the petitioner on the basis of her past service in terms of the said pension scheme. The petitioner had refunded the provident fund contribution only in the year 2003. Arrears of

pension, therefore, shall not carry interest till that date. Beyond that period, the entire arrears of pension till it is actually paid shall carry 10 per cent simple interest per annum. The petitioner shall be paid arrears and periodical pension regularly also. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)